IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13641 of 2006

Jagnnath Roy son of late Bachchan Roy, resident of village Haibatpur, P.S. Begusarai Mufassil, District Begusarai, … Petitioner

Versus

1. The State Of Bihar, through the Collector, Begusarai,
2. The Collector, Begusarai,
3. The Sub-divisional Officer, Begusarai,

… Respondents

For the Petitioner: Mr. Madan Pd. Singh No. 2, Advocate
For the State: Mr. J.P. Karn, AAG 4
Mr. A.K. Dubey, AC to AAG 4

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3 08.12.2011 Heard learned counsel for the petitioner and the State.

Petitioner seeks quashing of the order dated 27.06.2006 contained in Annexure 1, whereby the licence of the petitioner granted for running a Public Distribution System shop has been cancelled and also the order of the appellate authority, as contained in Annexure 6, dismissing the appeal and affirming the order passed by the licensing authority.

Learned counsel for the petitioner raises only one point at the time of hearing of this case that the show-cause filed by him has not been considered in proper perspective by the licensing authority while passing the impugned order of cancellation of his licence rather the

same has been passed in a mechanical manner without application of mind. It is submitted that, as per the direction, a show-cause was submitted by the petitioner. However, later on the petitioner's licence was suspended and again a show-cause was directed to be filed. The petitioner again filed a show-cause, but, according to the petitioner, his licence has been cancelled without discussing the grounds raised by the petitioner in the show-cause. Even in the appellate order, that has not been considered in proper perspective.

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A counter affidavit has been filed on behalf of the State.

Learned counsel for the State submits that the petitioner was given ample opportunity for filing a show-cause and after considering the same the original authority as well as the appellate authority have passed the orders under challenge. It is also submitted that even if assuming that the original authority did not consider the show-cause filed by the petitioner, the appellate authority had considered and rejected the same.

I do not find any force in the submission raised by learned counsel for the State.

From bare perusal of the impugned order passed by the original authority, it appears that it only speaks that the show-cause filed by the petitioner is not sufficient which would be apparent from the statement of certain persons recorded at the time of inspection/inquiry.

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However, in view of the stands taken in Annexures 3 and 5, i.e., show-cause filed by the petitioner, it does not appear that the grounds raised have been considered in proper perspective and the order appears to be passed in a mechanical manner. From the appellate order also it does not appear that the points raised by the petitioner have been discussed properly and rejected. However, assuming that having been done by the appellate authority, that would not cure the defect that has occurred in the original order.

In **M/s Umesh Chandra Dinesh Kumar v. The State of Bihar and others (1999(1) Bihar Law Judgments, 548)** a Division Bench of this Court has held that any order visiting consequence on the concerned person must assign reason otherwise the superior authority or the Court, in case of the order being challenged, will not be in a position to know the reason which has led the

authority in passing the order. It has further been held that even if the appellate order has considered the case of the petitioner, that will not cure the defect in the original order of the licensing authority regarding non-application of mind or passing the order in mechanical manner. Thereafter, in long line of decisions, this Court has set aside the orders that have been passed in mechanical manner.

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It would be also pertinent to refer the decision rendered in **C.W.J.C. No. 12675 of 2006 (Ram Uday Singh v. The State of Bihar and others)** and its analogous cases.

In above view of the matter, this Court is of the opinion that the impugned order in its present form cannot be sustained in law.

Accordingly, this writ application is allowed, the impugned orders as contained in Annexures 1 and 6 are set aside and the matter is remitted back to the original authority for taking fresh decision by recording a reasoned order in the matter after giving opportunity of hearing to the petitioner within six weeks from the date of receipt/production of a certified copy of this order.

However, it is made clear that this order would not entitle the petitioners for resumption of supplies automatically as the same would depend upon the outcome of the order which would be passed by the licensing authority.

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As it has been submitted on behalf of the petitioner that since a copy of the inspection/inquiry report has not been supplied to him, let a copy thereof be supplied to him after he appears before the concerned authority. In that view of the matter, it will be open to the petitioner to file a supplementary show-cause, if he desires so, in view of the inspection/inquiry report supplied to him.

Since this order is being passed in presence of the petitioner let the petitioner produce a certified copy of this order before the concerned authority within six weeks otherwise it would be open for the authority concerned to take a decision even in absence of the petitioner.

SC **(Dr. Ravi Ranjan, J.)**